

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #7	CCRB Case #: 201807668	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/05/2018 10:30 PM	Location of Incident: 43rd Precinct stationhouse	Precinct: 43	18 Mo. SOL 3/5/2020	EO SOL 3/5/2020	
Date/Time CV Reported Thu, 09/06/2018 5:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Anthony Donato	00105	948904	043 PCT
2. Officers			43 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Falconi	18850	951723	043 PCT
2. POM Bory Echanique	17967	958540	043 PCT
3. SGT Daniel Diaz	01282	934759	VED ZN1
4. POM Federico Rivera	00622	947403	043 PCT
5. POF Ana Castro	26503	957437	043 PCT
6. POM Michael Gatti	05080	961782	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b)	
B.SGT Anthony Donato	Force: Sergeant Anthony Donato used physical force against § 87(2)(b)	
C.SGT Anthony Donato	Discourtesy: Sergeant Anthony Donato spoke discourteously to § 87(2)(b)	
D.SGT Anthony Donato	Off. Language: Sergeant Anthony Donato made remarks to § 87(2)(b) based upon race.	

Case Summary

On September 5, 2018, Captain Keiyon Ramsey of PSA 8 called the IAB Command Center and reported this complaint on behalf of § 87(2)(b). On September 17, 2018, the case was referred to the CCRB.

On September 6, 2018, at approximately 10:30 p.m., inside the 43rd Precinct stationhouse holding cells, officers from the 43rd Precinct used physical force against § 87(2)(b) (**Allegation A: Force, § 87(2)(g)**). Sergeant Anthony Donato of the 43rd Precinct allegedly kicked § 87(2)(b) in the face (**Allegation B: Force, § 87(2)(g)**), and said to him, “Who is the bozo? You are the one on the ground, you stupid fucking mutt” (**Allegation B: Discourtesy, § 87(2)(g)**; **Allegations C: Offensive Language, § 87(2)(g)**).

The criminal case against § 87(2)(b) stemming from this incident was consolidated with another case against him, but that case was not listed in the Office of Court Administration (OCA) database.

Police body worn camera and security camera footage from the 43rd Precinct stationhouse holding cell captured portions of this incident (BR02-BR03).

Findings and Recommendations

Allegation (A) Force: Officers used physical force against § 87(2)(b)

Allegation (B) Force: Sergeant Anthony Donato used physical force against § 87(2)(b)

§ 87(2)(b) in his initial complaint and statement to Cpt. Ramsey in the Threat Resistance and Injury Investigating Supervisor’s Assessment Report alleged that Sgt. Donato kicked him in the face in the holding cell (BR14). § 87(2)(b) has however become unavailable to the investigation despite extensive contact attempts made to him (BR01).

The investigation received security camera footage from the 43rd Precinct stationhouse holding cell (BR02). The video shows § 87(2)(b) who is shirtless, and an unidentified man lodged together in the holding cell. At 00:04, PO Jonathan Falconi, identified via investigation, enters the cell area, opens the cell gate, and the unidentified male prisoner exits. PO Falconi then attempts to close the cell gate, but § 87(2)(b) approaches and pushes the cell gate away from the lock. PO Falconi pushes the gate back and attempts to close the gate, but he appears overpowered by § 87(2)(b) who places his left leg at the edge of the gate and pushes the gate further open.

At 00:28, Sgt. Anthony Donato, Sgt. Daniel Diaz, PO Bory Enchanique, all identified via investigation, and approximately nine uniformed and plainclothed officers enter the holding cell area. At 00:30, Sgt. Donato pushes § 87(2)(b) on his shoulder and enters inside the cell. At 00:33, § 87(2)(b) pushes Sgt. Donato’s hands away from him. At 00:35, Sgt. Donato reaches his left hand towards § 87(2)(b) face, but it is unclear from the video if Sgt. Donato makes contact with § 87(2)(b) face.

At 00:36, Sgt. Donato and § 87(2)(b) appear to engage in a tussle, but their actions are clearly not depicted in the video. PO Enchanique, Sgt. Diaz and the other officers on scene, all enter inside the cell and attempt to assist Sgt. Donato. The officers’ actions are not clearly depicted, except that they all appear to be struggling with § 87(2)(b). At 00:40, PO Enchanique grabs one of § 87(2)(b) legs and appears to pull it, while the other officers struggle with § 87(2)(b) and appear to place him in handcuffs. At 01:09, the struggle ceases and the officers all stand around § 87(2)(b) who is lying face first on the ground and is rear cuffed. At 01:21, Sgt.

Donato, and approximately seven of the other officers on scene walk out of the cell and leave the cell area.

At 01:36, Sgt. Diaz and a uniformed officer lift § 87(2)(b) up from the floor. The officers then walk out of the cell, but § 87(2)(b) follows them towards the gate. At 02:18, Sgt. Diaz slightly pushes § 87(2)(b) on his chest away from the gate. At 02:28, § 87(2)(b) kicks the gate with his right leg as the officers' attempt to close the gate. At 02:29, Sgt. Diaz closes and locks the cell gate. § 87(2)(b) appears to be yelling and moving towards the cell gate. At 02:43, § 87(2)(b) bends his body and moves his handcuffed arms from behind his back to the front of the body. He then appears to yell and make hand and bodily gestures to Sgt. Diaz, who is standing outside the gate. At 02:52, Sgt. Diaz and the uniformed officer leave the cell area. At 15:57, four Emergency Services Unit officers arrive and remove § 87(2)(b) from the holding cells without any incident.

Sgt. Donato (BR04) said that he was behind the stationhouse front desk when he observed § 87(2)(b) through the stationhouse security cameras, pushing open the holding cell gate while PO Falconi attempted to close the cell gate. Sgt. Donato and some officers inside the stationhouse, all entered the cell area to assist PO Falconi. Sgt. Donato ordered § 87(2)(b) multiple times to stop pushing and move away from the gate, but § 87(2)(b) ignored him and continued to push the gate. Sgt. Donato attempted to enter the cell, but § 87(2)(b) pushed him on his upper body. Sgt. Donato and some of the other officers on scene then used varying amounts of minimum force to bring § 87(2)(b) to the ground. Sgt. Donato did not recall the officers' exact actions, except he grabbed § 87(2)(b) on his upper body. Sgt. Donato said § 87(2)(b) was brought to the ground because he was attempting to escape from the cell, and was noncompliant with officers' orders.

§ 87(2)(b) landed face first on the floor, but refused to give the officers his arms. Sgt. Donato and the other officers thus grabbed § 87(2)(b) arms from his side, placed them behind his back and handcuffed him. The officers then left the cell and locked the gate. No additional form of force was used against § 87(2)(b) and Sgt. Donato denied striking § 87(2)(b) in the face with either his hands or legs.

Sgt. Diaz (BR05), PO Falconi (BR06), and, PO Enchanique (BR07), all corroborated Sgt. Donato's account, and denied that Sgt. Donato or any other officer struck § 87(2)(b) in the face with his hands or legs.

NYPD Patrol Guide Procedure 221-01, states that officers may use force when it is reasonable to ensure their safety or a third person, or otherwise to protect life, or when it is reasonable to place a person in custody or prevent an escape from custody (BR15).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Discourtesy: Sergeant Anthony Donato spoke discourteously towards § 87(2)(b)

Allegation D: Offensive Language: Sergeant Antony Donato made remarks to § 87(2)(b)
based upon his race.

As discussed earlier, § 87(2)(b) has become unavailable to the investigation. Sgt. Donato BWC (BR03) shows officers reaching for § 87(2)(b) arms while § 87(2)(b) appears to be on the ground. At 22:31:10, Sgt. Donato grabs § 87(2)(b) left wrist while another officer, who is not depicted, handcuffs the arm. At 22:31:11, Sgt. Donato says to § 87(2)(b) “Who is the bozo? You are the one on the ground, you stupid fucking mutt,” and then releases his grip on § 87(2)(b) wrist. At 22:31:17, Sgt. Donato asks the officers if they are okay as he walks out of the cells and returns to the front desk.

Sgt. Donato did not recall making the above statement to § 87(2)(b). He thus reviewed his BWC footage, but said he did not recognize or recall the voice of the officer captured using the said profanities and offensive remarks. At the prompting of the Sergeants Benevolent Association Representatives (SBA Reps), Mr. John Patten and Sgt. Joseph Quinn, Sgt. Donato said that he was not denying being the officer captured using the said profanity and offensive remarks, but that he did not recall making those statements. Again, at the prompting of the SBA Reps, Sgt. Donato said whichever made those statements possibly uttered them under duress in what was seemingly a violent and stressful encounter.

NYPD Patrol Guide Procedure 203-09, states that officers must be courteous and respectful when interacting with members of the public. (BR08). However, in prior disciplinary cases, the NYPD has held that the use of profane remarks during stressful situations or while an officer is trying to get a chaotic situation under control, does not constitute misconduct. DAO-DCT Disciplinary Case No. 2017-17005 (BR09).

Patrol Guide Procedure 203-10, prohibits officers from using discourteous or disrespectful remarks regarding a person’s race or ethnicity (BR10).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR11)
- Sgt. Donato has been a member-of-service for eight years and has been a subject in 19 CCRB complaints and 50 allegations, of which three were substantiated:

- Case 201108564 involved substantiated stop of a person, refusal to provide name/ shield number, and, retaliatory summons allegations against Sgt. Donato. The Board recommended charges on all three allegations. The NYPD imposed Command Discipline B on the refusal to provide name/shield allegations, but imposed no discipline on the other two allegations.
- Sgt. Donato has four discourtesy word allegations pleaded against him stemming from three separate complaints, none of which were substantiated.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 30, 2019, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regard to this complaint (BR12).

- § 87(2)(b), § 87(2)(c) [REDACTED]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date